

07-3796-K

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Worklis LUNA
Petitioner,

v.

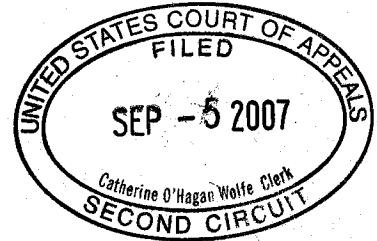
Alberto GONZALES
Attorney General,

Respondent

Civil Case No.

ICE File No: A 44-133-120

PETITION FOR REVIEW



I, Worklis, the petitioner, pro se, hereby petitions for a review by this Court of an order affirming the decision of the Immigration Judge entered by the Board of Immigration on July 20, 2007.

A copy of the order is attached.

To date, no court has upheld the validity of the order.

Dated: August 28, 2007

Respectfully submitted,

Worklis Luna

WORKLIS LUNA

PRO SE/PETITIONER

Buffalo Federal detention Facility

4250 Federal Drive

Batavia, New York 14020

1-3

Motion for ETP rec'd, Stop of Removal rec'd

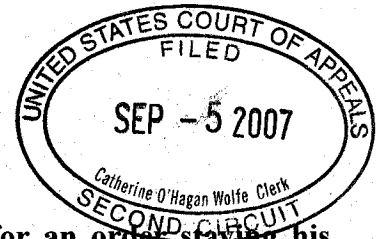
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Worklis LUNA
Petitioner,

v.

Alberto Gonzales
Respondent

) Case No:
) ICE File No: 44-133-120
) AFFIDAVIT IN SUPPORT OF THE
) PETITIONER'S MOTION FOR A STAY
) OF REMOVAL PENDING RESOLUTION
) OF PETITION FOR REVIEW



The petitioner, Worklis Luna, hereby moves this Court for an order ~~staying~~ his physical removal from the United States until such time as the Court has issued a final decision on the petition for review, filed with this court, to review whether the Board of Immigration Appeals had erred when it affirmed the Immigration Judge decision ordering him deported to Dominican Republic.

1. The Bureau of Immigration and Custom Enforcement (hereinafter "ICE") has initiated an order of removal against petitioner because he was ordered removed.
2. Petitioner is entitled as a matter of law for a judicial review of his final order of removal pursuant to INA § 242.
3. Petitioner is concurrently filing a petition for review before this Court. Filing of the Petition for review and service upon the Respondent's does not act automatically to stay the Petitioner's removal.
4. The petitioner who is detained in ICE custody and has so been detained since November of 2007, is therefore subject to being physically removed from the United States at any time, despite the fact that a petition for review is pending before this Court.
5. Petitioner has a substantial liberty interest at stake; namely, his right to remain in the United States and not to be effectively exile. He has considerable equities in the United States, which includes a United State citizen child and other family members who depends on him for physical, mental and financial support.

6. No application for relief sought herein has been made by the Respondent, other than the request for a stay of removal to be made in conjunction with the Petition for Review before the United States Court of Appeals for the Second Circuit.

Wherefore, the Petitioner seeks the protection of this Court and prays that the court issue an Order granting a stay of removal during its consideration of the Petition for Review, and for such and further relief as this Court may deem just and proper.

Dated: August 28, 2007

Respectfully submitted,

Worklis Luna

WORKLIS LUNA

Pro se / Petitioner

A# 44-133-120

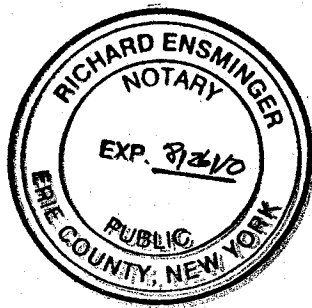
Buffalo Federal Detention Facility

4250 Federal drive

Batavia, New York 14020

Sworn to before me on the 28 day of August, 2007

[Signature]
NOTARY PUBLIC



CERTIFICATE OF SERVICE


I, Worklis Luna, the Pro se Petitioner, hereby certify under penalty of perjury that I personally caused to be served a copy of the Petition for Review together with all attachments, by regular mail on this 28 day of August, 2007, to the following individuals and addresses.

**Alberto Gonzales
Attorney General
U.S. Department of justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001**

**Thomas W. Hussey, Director
United States Department of Justice
Office of Immigration Litigation
1331 Pennsylvania Avenue, N.W.
Washington, D.C. 2004**

Executed on: August 28, 2007, in Batavia, New York

Respectfully submitted,



WORKLIS LUNA

PRO SE / PETITIONER

A# 44-133-120

Buffalo Federal Detention Facility

4250 Federal Drive

Batavia, New York 14020



Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Gonzalez, Ismael, Esq.
53 West 36th Street Suite 605
New York, NY 10018-0000

USICE/DHS Litigation/ULS
P.O. Box 606
Castle Point, NY 12511

Name: LUNA APONTE, WORLKLIS

A44-133-120

Date of this notice: 7/20/2007

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
MILLER, NEIL P.

schuckec

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A44 133 120 - Napanoch, NY

Date: JUL 20 2007

In re: WORLKLIS LUNA APONTE a.k.a. Worlklis Luna a.k.a. Worlklis Luna

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Ismael Gonzalez, Esquire

ON BEHALF OF DHS: Matthew J. O'Brien
Assistant Chief Counsel

ORDER:

PER CURIAM. The respondent has appealed from the Immigration Judge's decision dated May 3, 2007. The Immigration Judge found the respondent removable as charged and ineligible for any form of relief from removal. The respondent's argument on appeal is that the Immigration Judge erred in denying his request for a continuance so that he could seek post-conviction relief. We agree with the Immigration Judge's conclusion that the respondent has not shown good cause for a continuance. It is not good cause to request a continuance to await the results of a collateral event, such as the filing of post-conviction relief, which may or may not result in an outcome favorable to the respondent at some indefinite date in the future. *See Matter of Perez-Andrade*, 19 I&N Dec. 433 (BIA 1987) (the decision to grant or deny a continuance is within the discretion of the Immigration Judge, if good cause is shown, and that decision will not be overturned on appeal unless it appears that the respondent was deprived of a full and fair hearing). Accordingly, the respondent's appeal is dismissed.



FOR THE BOARD

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

WORKLIS LUNA
Petitioner,

**MOTION FOR
ENLARGEMENT OF TIME TO
FILE PETITION FOR REVIEW**

v.

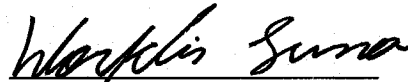
ALBERTO GONZALES, ATTORNEY GENERAL
Respondent.

Please take notice that upon the annexed affidavit of Worklis Luna and upon all proceedings previously held herein, Petitioner will move this court at 40 Foley Square, Room 2904, New York, New York 10007.

On the most convenient time as this court may deem proper as to grant him time to do so pursuant to Federal Rule of Appellate Procedure Rule 4 (a), (5), (6), 4 (b) and 31.

Dated: August 29, 2007

Respectfully submitted,



WORKLIS LUNA
A# 44-133-120

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

WORKLIS LUNA

Petitioner,

v.

ALBERTO GONZALES

Respondent

AFFIRMATION

Comes Now, Worklis Luna, acting on his own behalf, being duly sworn, does declare that all the statements and proceedings herein presented are true and correct.

Said petitioner is presently detained at Buffalo Federal Detention Facility located at 4250 Federal Drive, Batavia, New York 14020.

Petitioner wishes to apply for an enlargement of time to file a petition for review supporting brief due to counsel neglect, sudden lost of interest and giving petitioner false impression that he would submit all the necessary papers and continue to represent petitioner.

Further, Petitioner believes there exist question of law and facts that warrant a reversal of the removal order because of the now Supreme Court ruling concerning aggravated felony. Petitioner also believes that he is a citizen through the naturalization of his father. Although petitioner's father naturalize when petitioner was over eighteen, petitioner derived citizenship because petitioner's father's N-400 application was submitted

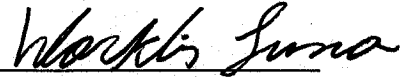
before he turned eighteen. Petitioner aged-out because of the length of time it took to adjudicate his father's application.

WHEREFORE, upon review of the fore going and other pertinent, relevant materials of note, petitioner humbly ask this court to grant the relief sought herein and any further relief it may deem just and proper.

Under penalty of perjury of the United States codified at 28 U.S.C. 1746.

To: CLERK'S OFFICE
COURT OF APPEALS FOR
THE SECOND CIRCUIT

Respectfully Submitted,



WORKLIS LUNA

A# 44-133-120

Pro se Petitioner

Dated: August 28, 2007